

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

HEATHER MARTINEZ,
Plaintiff,

vs.

DAVID DERRYBERRY,
Defendant.

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Civil Action No. 3:23-cv-264

NOTICE OF REMOVAL

COMES NOW David Derryberry (“Derryberry”), pursuant to the provisions of 28 U.S.C. §§ 1332 and 1446, appearing specially so as to preserve any and all defenses available under Rule 12, and hereby gives notice of the removal of this action from the District Court for the 122nd Judicial District of Texas, Galveston County, to the United States District Court for the Southern District of Texas, Galveston Division. In support of this Notice of Removal, Derryberry states as follows:

I. JURISDICTIONAL FACTS

1. This case relates to the alleged negligence, negligence per se, and gross negligence of Derryberry in relation to a February 8, 2022 motor vehicle collision in Galveston County also involving Heather Martinez. Heather Martinez (“Martinez”) instituted this case by filing an Original Petition in the District Court for the 122nd Judicial District of Texas, sitting in Galveston County, on July 21, 2023.

2. Derryberry was served with process on August 15, 2023.

3. This Notice, being filed on August 22, 2023, is timely. 28 U.S.C. § 1446(b)(1).

4. Martinez seeks monetary relief between \$250,000.00 and \$1,000,000.00. Exhibit B-2, Plaintiff's Original Petition at 6. Therefore, the minimum amount in controversy under 28 U.S.C. § 1332(a) is satisfied.

5. Martinez is a natural person and citizen of Harris County, Texas. *See* Ex. B-2 at 1.

6. Derryberry is a natural person and citizen of Shelby County, Alabama. *See* Ex. B-2 at 1.

7. Thus, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), and removal is proper. 28 U.S.C. § 1441(a).

8. Derryberry is the sole defendant. Accordingly, the provisions of 28 U.S.C. 1446(b)(2)(A) do not apply.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a).

10. True and correct copies of "all process, pleadings, and orders" from the state court are filed herewith pursuant to 28 U.S.C. § 1446(a).

11. No executed return of service of process is on file with the Texas district court.

12. Derryberry has provided written notice of the filing of this Notice of Removal to all parties in this action and is filing a copy of this Notice of Removal with the clerk of the state court where the action is pending pursuant to 28 U.S.C. § 1446(d).

13. Derryberry reserves the right to supplement this Notice of Removal by adding any jurisdictional bases that may support removal.

14. Derryberry has not heretofore sought similar relief.

II. PRAYER

WHEREFORE, PREMISES CONSIDERED, David Derryberry prays that this Court take jurisdiction of this action and issue all necessary orders and process.

Date: August 22, 2023

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ Jerry L. Rios

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CERTIFICATE OF SERVICE

I certify that I have served the counsel indicated below via the CM/ECF system, e-mail, and/or fax on this, the 22nd day of August 2023.

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